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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Jammu and Kashmir Council for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[5 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Azad Kashmir Judiciary - Rights of peoples, and of specific groups and individuals (Minority issues)

JKCHR welcomes the annual report A/HRC/37/26 of the United Nations High Commissioner for Human Rights submitted under agenda items 2 and 3, on the 25th anniversary of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In the Declaration, adopted by the General Assembly by consensus in resolution 47/135, the Assembly stresses that the promotion and protection of the rights of persons belonging to minorities contribute to the political and social stability of the States in which they live.

In paragraph 27 "The High Commissioner for Human Rights has recalled that respect for religious diversity is threatened today in an increasing number of societies, both by the rise of violent extremists and by a wave of isolationist and nationalistic thinking. Those discourses threaten religious and ethnic minorities with increased discrimination and even violence. Over the past year, OHCHR has organised a series of meetings among faith-based and civil society actors, seeking to help them establish a respectful common ground on the essential principles of human dignity, equality and justice. In March 2017, they adopted the Beirut Declaration and its 18 commitments on "Faith for rights". It aims to foster peaceful societies, which uphold diversity of belief, behaviour and thought as an intrinsic and inalienable right of all their people".

JKCHR finds that OHCHR minorities fellowship programme that took place from 13 November to 1 December 2017, with two linguistic components (English and Russian) had 15 participation from Afghanistan, Georgia, India, Israel, Jordan, Kosovo, Kyrgyzstan, Latvia, Myanmar, Nepal, Pakistan, the Russian Federation, Spain, the Sudan, and Tajikistan. The constituency of Fellowship programme would have been more rewarding if inputs from NGOs like JKCHR had been invited in time. NGOs that have partnered with OHCHR in this fellowship programme have failed many other NGOs working for the equality and right of self-determination of people, of different faiths living in a single habitat.

Missing out on a representation from Azad Kashmir at the fellowship programme is unfortunate. The judiciary of the habitat of Pakistan administered Azad Kashmir has been offering a ray of hope in the defence of Minority rights.

Three judgements by the Supreme Court of Azad Jammu and Kashmir authored by its Chief Justice Ch. Muhammad Ibrahim Zia and Justice Raja Saeed Akram Khan in Civil Appeal Number 144 of 2014 and Chief Justice Mohammad Azam Khan and Justice Ch. Muhammad Ibrahim Zia in Civil Appeal Number 242 of 2013 and the judgement in a suo moto action taken by Chief Justice of Supreme Court Chaudhary Muhammad Ibrahim Zia on a letter from Save Sharda Committee, to protect the Sharda Peeth and the fourth decision authored by the Chief Justice of High Court Azad Jammu and Kashmir Justice M Tabassum Aftab Alvi, Justice Azhar Saleem Babar and Justice Mohammad Sheraz Kiani in Writ Petition Number 1275/2014 in regard to political rights of a 'special group' of over 3 million people designated in the Constitution of Azad Kashmir, as refugees from the disputed State of Jammu and Kashmir, and living in the various provinces of Pakistan, have advanced the scope of article 9 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and merit of the Declaration, adopted by the General Assembly by consensus in resolution 47/135.

It is important that OHCHR recognises the support coming for article 9 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and for the Declaration, adopted by the General Assembly by consensus in resolution 47/135 from the judiciary of Azad Jammu and Kashmir. The Supreme Court of Azad Jammu and Kashmir has directed its government to protect the Sharda Peeth. The Chief Justice of Azad Jammu and Kashmir Supreme Court, Chaudhary Muhammad Ibrahim Zia issued directions to the authorities to protect religious places and symbols like temples and Gurdwaras. Supreme Court Chief Justice has advised the displaced Kashmiri Pandits, seeking to restart Sharda pilgrimage, to approach the concerned authorities in Azad Kashmir and pursue the remedy.

Save Sharda Committee has been fighting for the protection of Sharda Peeth and other Hindu temples and seeking to restart Sharda pilgrimage. Sharda Peeth is 142-long and 94 6-feet wide abandoned Hindu temple located in the village of Sharda along the Neelam River in Azad Kashmir, near the Line of Control. Sharda Peeth was once a celebrated centre of learning in the subcontinent. The last Sharda pilgrimage was undertaken at the time of the partition of the subcontinent in 1947.

The abandoned temple site was heavily damaged in the October 8, 2005 earthquake. "In case failure on the part of state functionaries in carrying out of the judgements, you may approach this court for redress of your grievances (sic)," Registrar Supreme Court of 'Azad Jammu and Kashmir,' Riaz Ahmad wrote on behalf of the 'AJK' SC Chief Justice in a letter addressed to Ravinder Pandita, the founder of Save Sharda Committee, Kashmir.

Azad Jammu and Kashmir SC Chief Justice has appreciated the efforts of Save Sharda Committee, and has urged that the committee should not restrict itself only to the restoration of the Hindu temples but also focus on the protection of holy places and symbols of other religions. "The Judgement has desired that the committee shall also raise voice against worst fanatic acts like demolition of Babri Masjid in Ayodhya and the religious places of other religions especially the buildings and sacred places relating to the religion of Islam".

Save Sharda Committee had sought the intervention of the Azad Jammu and Kashmir SC Chief Justice to press the Azad Kashmir government to save the ancient Sharda temple after the Supreme Court of Pakistan passed a historic judgement on renovation of Katas Raj temple in Punjab on November 23, 2017. The committee had sought restarting of Sharda pilgrimage on the pattern of Nankana Sahib Lahore annual pilgrimage by Sikhs.

Chief Justice Supreme Court Muhammad Ibrahim Zia in his judgement in Civil appeal Number 144 of 2014 has held that, "We do not feel any hesitation in holding that according to the nature of the suit land, neither it is an evacuee land available for allotment to any person, nor, it can be used for any other purpose as it is proved from the record that the land is permanently dedicated for (temple). In this regard in the supra case, we have already issued direction for restoration of such like places to their original position".

Participants from 15 countries at the OHCHR minorities fellowship programme that took place from 13 November to 1 December 2017, would have benefitted to note that Supreme Court of Azad Jammu and Kashmir in its judgement delivered on 23 June 2015 has observed that "Therefore, it is felt advised that for maintaining the harmony among the people of different regions and maintaining the peace in the State, due protection and respect of religious places and symbols, is the duty of the State Government. Under the provisions of Section 3 of Azad Jammu and Kashmir Interim Constitution Act, 1974, Islam is the State religion which theoretically and practically is a religion of peace. The term 'Islam' grammatically means peace, protection and security. Historically, it has been undoubtedly proved that Islam has provided complete code of life which practically maintains the unprecedented peace in the society, human dignitaries and inter-religion harmony among the State Subjects. In Islam, the disgrace of other religions, dignitaries and religious symbols or places is strictly prohibited".

Human Rights Council pursuant to its resolution 31/13 will consider the annual report of the High Commissioner containing information on relevant developments of United Nations human rights bodies and mechanisms and on the activities undertaken by OHCHR that contribute to the promotion of and respect for the provisions of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/HRC/37/26). The consideration would be incomplete without a due acknowledgment of the important role played by the Supreme Court and High Court of Azad Jammu and Kashmir, in defending the rights of 'Minorities' and rights of 'Specific groups'.

OHCHR has to widen the scope of its constituency on Minority rights. It needs to consider inviting the two chief justices of Supreme Court and High Court of Azad Jammu and Kashmir to Geneva. Government of Pakistan could be approached to arrange meetings with them in Muzaffarabad, Azad Kashmir. Azad Kashmir Government is known to the United Nations, since it has lodged its first formal grievance at the United Nations by writing to The Chairman of the United Nations Commission for India and Pakistan on 8 July 1948 (S/AC.12/Info.3 22 July 1948). The foundations of the government and its relationship with the government of Pakistan are laid on their respective faith in UNCIP

resolutions. Human Rights Council has to assist the two governments in the promotion and protection of rights guaranteed in UNCIP resolutions and UN Security Council resolutions for all State Subjects living on either side of cease fire line and as Diaspora.

JKCHR is willing to facilitate an energised engagement between the superior judiciary of Azad Jammu and Kashmir, Government of Pakistan and OHCHR.